

REMARKS

I. INTRODUCTION

Claims 1-11, 26-31, 35, and 37-48 are pending. Claims 1, 26, and 38 are independent claims. The Office Action rejected claims 1-11, 26-30, 35, and 37-48 (and presumably also claim 31) were rejected under 35 USC § 112, first paragraph, for allegedly failing to comply with the written description requirement. Further in the Office Action, claims 1-11 and 26-31 were rejected under 35 U.S.C. § 102(b) as allegedly anticipated by EP1515496 A2 to Spaur et al (“European Spaur”). Claims 35 and 37 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over European Spaur in view of purportedly “well-known prior art.” The Office Action did not set forth any prior art rejections of claims 38-48.

In view of the following arguments, all claims are believed to be in condition for allowance over the prior art of record. Therefore, this response is believed to be a complete response to the Office Action. However, Applicants reserve the right to set forth further arguments supporting the patentability of their claims, including the separate patentability of the dependent claims not explicitly addressed herein, in future papers. Further, for any instances in which the Examiner took Official Notice in the Office Action, including the instance expressly discussed below, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2).

II. WITHDRAWAL OF FINALITY

The finality of the present Office Action must be withdrawn. The Office Action stated that Applicants had made an amendment that “necessitated the new ground(s) of rejection presented in this Office action.” (Office Action, page 6.) However, Applicants did not make any amendments in their paper preceding the present Office Action. Therefore, the Office Action was made final on an erroneous basis, and the finality of the Office Action must be withdrawn.

Moreover, the Examiner has presented a ground of rejection that was previously presented in the Office Action dated March 26, 2008, and that Applicants, in their paper dated June 26, 2008, provided detailed arguments traversing. However, the Examiner never provided any response to those arguments, and has not done so in the present Office Action. The Examiner’s failure to

properly consider and respond to Applicants' prior arguments against the exact same rejections that had been withdrawn and are now re-presented provides further basis for withdrawing the finality of the present Office Action.

III. SECTION 112 REJECTIONS

The Examiner rejected Applicants' claims under Section 112, first paragraph. By way of example, claim 1 recites that "the processor is programmed to retrieve, via the first wireless configurations device, directly and not via a controller in the equipment, at least one measurement from a second wireless communications device connected to at least one measurement device." The Examiner alleged that the claims "require providing 'directly and not via a controller' a measurement," and that "upon review of the specification, this limitation is not described." (Office Action, pages 2-3.) The Examiner conceded that Applicants' Specification does "suggest direct communication of the measurement information from a sensor to an external equipment," but asserted that "the 'not via a controller in the equipment' limitation is not supported." (*Id.*, page 2.) However, by the Examiner's own reasoning, if such "direct communication" is supported in Applicants' Specification, then clearly and necessarily the recited "measurement from a second wireless communications device connected to at least one measurement device" is retrieved "directly and not via a controller in the equipment." For this reason, and also based on the arguments set forth in Applicants' paper dated January 15, 2009 (fully incorporated herein by reference), which arguments the Examiner is respectfully urged to reconsider, the Section 112 rejections of Applicants' claims should be withdrawn.

IV. SECTION 102 REJECTIONS

A. Failure of European Spaur to Qualify as Prior Art

As Applicants explained in their paper dated June 26, 2008, European Spaur does not qualify as prior art under Section 102(b) because that reference was published after, and not more than a year prior to, the priority date of the present application. Specifically, European Spaur was published March 16, 2005. This application was filed February 17, 2004. However, European Spaur appears to include the disclosure originally made in the application for U.S. Patent No. 5,732,074 to Spaur et al. ("Spaur"). The Examiner has ignored Applicants arguments that European

Spaur is not prior art against the instant application under Section 102(b). The present Section 102 rejection of Applicants claims should be withdrawn for at least this reason.

European Spaur claims priority to Spaur. Spaur issued on March 24, 1998. Therefore, to expedite prosecution, in their paper dated June 26, 2008, and again in the present paper, Applicants provide arguments explaining the inapplicability of Spaur to the presently pending claims. Applicants note that Applicants cited Spaur in an Information Disclosure Statement (IDS) filed with this application. The Examiner considered Spaur as reflected by the Examiner's initials and signature on the afore-mentioned IDS accompanying the Office Action dated September 23, 2004. Further, following Applicants June 26, 2008, paper, as noted above, the Examiner did not provide any response or explanation concerning Applicants' arguments related to Spaur. Instead, the Examiner simply withdrew the rejection based on Spaur, without explanation, and has now re-presented those rejections without any explanation or apparent consideration of Applicants' prior arguments.

B. Independent claims 1, 26, and 38

Claim 1 recites in part that "the processor is programmed to retrieve, via the first wireless communications device, directly and not via a controller in the equipment, at least one measurement from a second wireless communications device connected to at least one measurement device." Spaur fails to teach or suggest at least "a second wireless communications device connected to at least one measurement device" as recited in claim 1, much less does Spaur teach or suggest retrieval of any data "via the first wireless communications device, directly and not via a controller in the equipment . . . from a second wireless communications device connected to at least one measurement device."

Spaur discloses no more than communication of vehicle data to a remote computer "using an apparatus compatible with standardized network communication links." (Spaur, Abstract.) Thus, Spaur discloses that communications between a controller and devices in a vehicle take place via known data network protocols, such as CAN (controller area network). (E.g. Spaur, Figs. 1-3; col. 3, lines 57-65.) For example, Spaur's Figure 1 shows a wireless device 18 in communication with a vehicle controller 30, which is in turn in communication with vehicle devices 50. Moreover, Spaur explains that:

With regard to providing information to a remote station 10, a substantially symmetrical relationship exists among the elements of FIG. 1. That is, the controller 30 is able to prepare information for sending to a remote station 10, including data or other information available from one or more of the vehicle devices 50 using the vehicle standardized network 40. Such information is sent to the wireless device 18 through its interface 22 for transmission using the vehicle airlink transfer protocol modem 20 over the airlink to the remote station 10 by way of the remote standardized network 14 in combination with the remote airlink transfer protocol modem 16.

In other words, Spaur depends on a central processor in a vehicle to retrieve data from devices in the vehicle. (See Spaur, col. 3, line 57- col. 4, line 57.) In fact, Spaur fails to disclose any direct communication of data from devices in a vehicle to a remote wireless device at all. Therefore, Spaur cannot teach or suggest retrieval of any data “via the first wireless communications device, directly and not via a controller in the equipment.”

In fact, Spaur does not even teach or suggest any “wireless communications device connected to at least one measurement device.” Moreover, because Spaur teaches that all communications occur through a central controller in a vehicle, as described above, Spaur would have had no reason to implement a “wireless communications device connected to at least one measurement device.”

As Applicants explained in their Specification, Spaur “describes communication of vehicle data to a remote computer, but discloses that the communications take place via known data network protocols, such as CAN.” (Specification, paragraph 0002.) Applicants further explained that “at present, a user must depend on intermediate mechanisms, such as a central processor or CAN communications, to retrieve data from a sensor on a piece of equipment such as a vehicle.” (Id., ¶ 0003.) Thus, by teaching that communications between a device in a vehicle, and a remote wireless device, occur through a vehicle’s central controller, Spaur actually teaches away from the recitation in claim 1 that “the processor is programmed to retrieve, via the first wireless communications device, directly and not via a controller in the equipment, at least one measurement from a second wireless communications device connected to at least one measurement device.”

For at least the foregoing reasons, claim 1, along with the claims depending therefrom, are allowable over Spaur. Independent claims 26 and 38, and all claims depending therefrom, are also allowable over Spaur for similar reasons.

C. Dependent Claims 4 and 40

Claim 4 depends from claim 1 and further recites that “the processor is further programmed to configure the measurement device.” Claim 40 depends from claim 38 and recites “sending a third communication from the processor for configuring the measurement device.” Contrary to the Examiner’s allegation (Office Action, page 3), Spaur does not teach or suggest the subject matter recited in claim 4. In fact, the portion of Spaur cited by the Examiner simply discloses that a direct communications port may be provided to a vehicle CAN when a wireless device is unavailable. (Spaur, col. 10, line 65 – col. 11, line 14.) Spaur does not provide any teaching or suggestion of a processor “programmed to configure the measurement device.” In fact, Spaur does not appear to provide any teaching or suggestion of configuring a measurement device at all. For at least these reasons, claims 4 and 40 are each separately patentable.

D. Dependent Claims 11 and 48

Claim 11 depends from claim 1 and further recites that “the wireless communications device is selectively attached to at least one second measurement output device.” Claim 48 depends from claim 38 and similarly recites “selectively attaching the second wireless communications device to at least one second measurement device.” Spaur does not teach or suggest a wireless communications device attached to any measurement output device, as explained above. For at least this reason, Spaur cannot teach or suggest the subject matter recited in claim 4, as discussed above. Further, Spaur certainly includes no teaching or suggestion of a wireless communications device that is “selectively attached to at least one second measurement output device.” (Emphasis added.) The portion of Spaur cited by the Examiner simply discloses that a direct communications port may be provided to a vehicle CAN when a wireless device is unavailable. (Spaur, col. 10, line 65 – col. 11, line 14.) Spaur’s disclosure includes no teaching or suggestion of attaching a wireless communications device to first or second measurement output devices. Therefore, for at least the foregoing reasons, claims 11 and 48 are each separately patentable.

V. SECTION 103 REJECTIONS – CLAIMS 35 AND 37

Claims 35 and 37 depend from claims 1, 26, and 38 respectively, and are patentable for at least that reason. Claims 35 and 37 each recite that “the at least one measurement device is selectively detachably connected to a component in the equipment.” In the non-final Office Action dated July 31, 2007, the Examiner took Official Notice in rejecting claims 35 and 37. Applicants disagreed with the taking of Official Notice, and seasonably requested for the Examiner to provide an affidavit in support of the Official Notice in the next Office Action, as required by 37 CFR 1.104(d)(2). (Response to Office Action dated July 31, 2007, pages 5-6.) Applicants again requested support for the Official Notice taken in their paper dated June 26, 2008. The Examiner failed to provide an affidavit or any other evidence to support the taking of Official Notice in the Office Action. The rejections of claims 35 and 37 must be withdrawn for at least this further reason.

VI. CONCLUSION

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, reconsideration and allowance are respectfully requested and the Examiner is respectfully requested to pass this application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 18-0013, under Order No. 65856-0054. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

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Respectfully submitted,

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